

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SIGHT SCIENCES, INC.,)	
)	C. A. No.: 21-1317-JLH-SRF
Plaintiff,)	
)	JURY TRIAL DEMANDED
v.)	
)	
IVANTIS, INC., ALCON RESEARCH LLC,)	
ALCON VISION, LLC AND ALCON INC.,)	
)	
Defendants.)	

STIPULATION AND ~~PROPOSED~~ ORDER TO NARROW CASE

WHEREAS, the parties have worked in good faith in an effort to reach an agreement on when and how to limit (i) the number of asserted claims by Plaintiff and (ii) the number of grounds used by Defendants to support their invalidity defense at trial; and

WHEREAS, the parties met and conferred in an effort to finalize the timing and scope of limits (i) and (ii) above;

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, subject to the approval of the Court, that:

(1) By February 26, 2024 at 5:00 PM ET, Plaintiff shall elect and identify no more than **ten** asserted claims total;

(2) By March 1, 2024 at 5:00 PM ET, Defendants shall elect and identify no more than **six** invalidity grounds per elected claim. An “invalidity ground” for a given claim includes: (1) a single reference anticipates the claim, (2) a single reference renders the claim obvious, (3) a combination of references renders the claim obvious, (4) a single basis for invalidity under one or more of the requirements of 35 U.S.C. § 112 (*e.g.*, if Defendants contend a claim is non-enabled, indefinite, and lacks written description, each category would count as a ground (*i.e.*, 3 grounds in this example)), and (5) obviousness-type double patenting.

The parties further agree that:

(3) Plaintiff's election of claims must be from claims Plaintiff asserted in its Final Infringement Contentions and/or expert reports.

(4) Defendants will not seek a judgment of invalidity of a non-elected claim at the trial in this case. If Sight does not elect any claims from any one or more asserted patent(s), the Counts in Sight's Complaint related to patent(s) from which no claims were elected shall be deemed dismissed with prejudice. Nothing in this provision will preclude Defendants from challenging the validity of any Sight patent claim in any other venue, or from raising any defense to the elected Sight claims at trial in this case.

(5) To the extent Defendants rely on a combination of references in support of an invalidity ground based on obviousness under 35 U.S.C. § 103, such combination must have been disclosed in Defendants' expert reports and/or Final Invalidity Contentions in this lawsuit.

(6) When Defendants identify their elected invalidity grounds for trial, Defendants will identify obviousness combinations in the exemplary form of "Reference 1 and Reference 2 and Reference 3," and shall not include any "or" combinations.

(7) Defendants' election of invalidity grounds does not include or limit the number of references Defendants may use at trial for the purposes of background art, showing the state of the art or level of skill in the art, showing the knowledge of a person of ordinary skill in the art, proving a motivation to modify or combine teachings or references, or rebutting arguments made by Plaintiff, so long as Defendants are not pointing to any such reference solely to provide a missing claim element for purposes of that obviousness ground.

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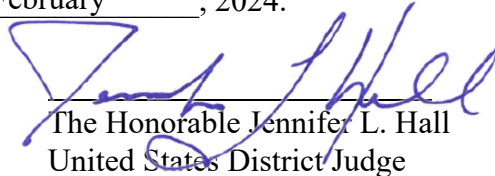
Attorneys for Sight Sciences, Inc.

Dated: February 26, 2024

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SO ORDERED this 27th day of February, 2024.



The Honorable Jennifer L. Hall
United States District Judge

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